

JAN 21 2021

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# A BILL FOR AN ACT

RELATED TO AFFORDABLE HOUSING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 46-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§46-4 County zoning.** (a) This section and any  
4 ordinance, rule, or regulation adopted in accordance with this  
5 section shall apply to lands not contained within the forest  
6 reserve boundaries as established on January 31, 1957, or as  
7 subsequently amended.

8 Zoning in all counties shall be accomplished within the  
9 framework of a long-range, comprehensive general plan prepared  
10 or being prepared to guide the overall future development of the  
11 county. Zoning shall be one of the tools available to the  
12 county to put the general plan into effect in an orderly manner.  
13 Zoning in the counties of Hawaii, Maui, and Kauai means the  
14 establishment of districts of such number, shape, and area, and  
15 the adoption of regulations for each district to carry out the  
16 purposes of this section. In establishing or regulating the  
17 districts, full consideration shall be given to all available



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1 data as to soil classification and physical use capabilities of  
2 the land to allow and encourage the most beneficial use of the  
3 land consonant with good zoning practices. The zoning power  
4 granted herein shall be exercised by ordinance which may relate  
5 to:

- 6 (1) The areas within which agriculture, forestry,  
7 industry, trade, and business may be conducted;
- 8 (2) The areas in which residential uses may be regulated  
9 or prohibited;
- 10 (3) The areas bordering natural watercourses, channels,  
11 and streams, in which trades or industries, filling or  
12 dumping, erection of structures, and the location of  
13 buildings may be prohibited or restricted;
- 14 (4) The areas in which particular uses may be subjected to  
15 special restrictions;
- 16 (5) The location of buildings and structures designed for  
17 specific uses and designation of uses for which  
18 buildings and structures may not be used or altered;
- 19 (6) The location, height, bulk, number of stories, and  
20 size of buildings and other structures;
- 21 (7) The location of roads, schools, and recreation areas;



- 1 (8) Building setback lines and future street lines;
- 2 (9) The density and distribution of population;
- 3 (10) The percentage of a lot that may be occupied, size of
- 4 yards, courts, and other open spaces;
- 5 (11) Minimum and maximum lot sizes; and
- 6 (12) Other regulations the boards or city council find
- 7 necessary and proper to permit and encourage the
- 8 orderly development of land resources within their
- 9 jurisdictions.

10 The council of any county shall prescribe rules,  
11 regulations, and administrative procedures and provide personnel  
12 it finds necessary to enforce this section and any ordinance  
13 enacted in accordance with this section. The ordinances may be  
14 enforced by appropriate fines and penalties, civil or criminal,  
15 or by court order at the suit of the county or the owner or  
16 owners of real estate directly affected by the ordinances.

17 Any civil fine or penalty provided by ordinance under this  
18 section may be imposed by the district court, or by the zoning  
19 agency after an opportunity for a hearing pursuant to chapter  
20 91. The proceeding shall not be a prerequisite for any  
21 injunctive relief ordered by the circuit court.



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1           Nothing in this section shall invalidate any zoning  
2 ordinance or regulation adopted by any county or other agency of  
3 government pursuant to the statutes in effect prior to July 1,  
4 1957.

5           The powers granted herein shall be liberally construed in  
6 favor of the county exercising them, and in such a manner as to  
7 promote the orderly development of each county or city and  
8 county in accordance with a long-range, comprehensive general  
9 plan to ensure the greatest benefit for the State as a whole.  
10 This section shall not be construed to limit or repeal any  
11 powers of any county to achieve these ends through zoning and  
12 building regulations, except insofar as forest and water reserve  
13 zones are concerned and as provided in subsections (c) and (d).

14           Neither this section nor any ordinance enacted pursuant to  
15 this section shall prohibit the continued lawful use of any  
16 building or premises for any trade, industrial, residential,  
17 agricultural, or other purpose for which the building or  
18 premises is used at the time this section or the ordinance takes  
19 effect; provided that a zoning ordinance may provide for  
20 elimination of nonconforming uses as the uses are discontinued,  
21 or for the amortization or phasing out of nonconforming uses or



1 signs over a reasonable period of time in commercial,  
2 industrial, resort, and apartment zoned areas only. In no event  
3 shall such amortization or phasing out of nonconforming uses  
4 apply to any existing building or premises used for residential  
5 (single-family or duplex) or agricultural uses. Nothing in this  
6 section shall affect or impair the powers and duties of the  
7 director of transportation as set forth in chapter 262.

8 (b) Any final order of a zoning agency established under  
9 this section may be appealed to the circuit court of the circuit  
10 in which the land in question is found. The appeal shall be in  
11 accordance with the Hawaii rules of civil procedure.

12 (c) Each county may adopt reasonable standards to allow  
13 the construction of two single-family dwelling units on any lot  
14 where a residential dwelling unit is permitted.

15 (d) Each county shall adopt reasonable standards to allow  
16 religious institutions and educational institutions to design,  
17 build, and construct affordable housing units on any land or  
18 parcel that the institution owns in fee simple.

19 [~~d~~] (e) Neither this section nor any other law, county  
20 ordinance, or rule shall prohibit group living in facilities  
21 with eight or fewer residents for purposes or functions that are



1 licensed, certified, registered, or monitored by the State;  
2 provided that a resident manager or a resident supervisor and  
3 the resident manager's or resident supervisor's family shall not  
4 be included in this resident count. These group living  
5 facilities shall meet all applicable county requirements not  
6 inconsistent with the intent of this subsection, including but  
7 not limited to building height, setback, maximum lot coverage,  
8 parking, and floor area requirements.

9 ~~[-(e)]~~ (f) Neither this section nor any other law, county  
10 ordinance, or rule shall prohibit the use of land for employee  
11 housing and community buildings in plantation community  
12 subdivisions as defined in section 205-4.5(a)(12); in addition,  
13 no zoning ordinance shall provide for the elimination,  
14 amortization, or phasing out of plantation community  
15 subdivisions as a nonconforming use.

16 ~~[-(f)]~~ (g) Neither this section nor any other law, county  
17 ordinance, or rule shall prohibit the use of land for medical  
18 cannabis production centers or medical cannabis dispensaries  
19 established and licensed pursuant to chapter 329D; provided that  
20 the land is otherwise zoned for agriculture, manufacturing, or  
21 retail purposes.



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1        (h) For the purposes of this section:

2        "Affordable housing" means any dwelling unit that is  
3 required to be leased to an individual with a gross annual  
4 income of less than \$72,3000 or any dwelling unit that is  
5 required to be sold to an individual with an income of not more  
6 than sixty per cent of the area median income as published by  
7 the department of business, economic development, and tourism.

8        "Educational institution" means a private educational  
9 organization that has been granted tax exempt status under  
10 section 501(c)(3) of the Internal Revenue Code of 1986, as  
11 amended.

12        "Religious institution" means any religious institution or  
13 organization which does not restrict membership to persons on  
14 the basis of race, color, or ancestry and no part of the  
15 earnings of which inure to any private shareholder or  
16 individual.

17        (i) Any institution that builds or constructs affordable  
18 housing under the provisions of this section shall be bound by  
19 the requirements of chapter 515 and sections 302A-1601 to  
20 302A-1612."



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1 SECTION 2. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: 



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**Report Title:**

Affordable Housing; Religious Institutions; Educational Institutions

**Description:**

Requires counties to adopt rules allowing religious and educational institutions to build affordable housing units on land they own regardless of current zoning restrictions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

